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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,841	09/30/2002	Susanne Brakmann	B1180/20005	5272

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EXAMINER

HANDY, DWAYNE K

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/089,841

Applicant(s)

BRAKMANN ET AL.

Examiner

Dwayne K. Handy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04/04/2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/4/02, 9/30/02.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 17-20, 22-25 and 29-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Peters (4,299,920). Peters shows a receptacle for cell cultures or biological samples. The device is comprised of a base plate (3) and wall section (1) having a number of wells (2). Peters states the wall section may be comprised of several materials including silicone rubber (column 2, lines 8-35). Materials for the base plate – including glass – are disclosed in column 3, lines 10-13. A cover element (not shown) is disclosed in column 3, lines 33-50.

3. Claims 17, 18, 25, 26 and 29-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Elkins (4,441,793). Elkins teaches an evaluation slide for viewing liquid specimen. The device is best shown in Figure 3 and described in column 2. The device has a base layer (23), a wall layer (24), and a cover layer (25) with openings (17-22). Elkins discloses the use of polystyrene for the various layer (24) in column 2, lines 39-52.

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4. Claims 17-19 and 29-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Brigati (4,798,706). Brigati shows a device for holding liquid samples. The device is best shown in Figures 2A and 2B. The device is comprised of a rigid base (62) and an elastomeric member (64) having a number of holes (66a-66e) for holding the liquid droplets. Brigati teaches the use of polymers as the elastomeric layer and glass for the rigid layer in column 5, lines 11-26.

Inventorship

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peters or Elkins or Brigati in view of Muramatsu et al. (6,645,434). Peters or Elkins or Brigati teach a device having an upper elastomeric layer with holes that form wells when placed on another, lower base layer. These references do not teach a base thickness of about 150 microns. Muramatsu teaches an observation plate comprised of a smooth glass plate having a crystalline thin layer on the upper surface. The glass used in Muramatsu is "nearly 0.17 mm" and when combined with the crystalline layer, the overall thickness is less than 0.25 mm. This dimension allows for the examination of the slide by an oil-immersed or water-immersed type objective lens of an inverting microscope (column 2, lines 53-67). It would have been obvious to one of ordinary skill in the art, then, to combine the thickness teaching from Muramatsu with the device of Peters or Elkins or Brigati. One would use the thickness suggested by Muramatsu to allow for examination of the slide by an oil-immersed or water-immersed type objective lens of an inverting microscope.

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8. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peters or Elkins or Brigati in view of Brown (6,037,168). Peters or Elkins or Brigati teach a device having an upper elastomeric layer with holes that form wells when placed on another, lower base layer. These references do not teach an upper layer having channels that comprise fluid lines, however. Brown also teaches a device that is comprised of an upper layer (24) with holes (26) that form wells when placed on another, lower base layer (22). The upper layer of Brown may also include channels that connect the wells. This allows for the exchange of fluids between the wells (column 14, lines 14-28). It would have been obvious to combine the channels of Brown with the device of Peters or Elkins or Brigati. One would add the channels to the elastomeric layer in order to allow for the exchange of fluids between wells as suggested by Brown.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Silver et al. (3,922,464) and Georger, Jr. et al. (5,510,628) teach films used in forming observation plates. Wallace (3,656,833), White (3,726,767), McCormick (3,745,091), Henry (3,904,781), Hozumi et al. (4,818,623), Shibasaki (5,170,285), Turner (5,571,721), Ferguson (5,784,193), and Wendelbo et al. (6,806,093) show additional examples of slides or plates having a layer with wells for holding samples.


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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwayne K. Handy whose telephone number is (571)-272-1259. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DKH
June 9, 2005


Jill Warden
Supervisory Patent Examiner
Technology Center 1700